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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CC Docket No. 96-128

In the Matter of)
)
Implementation of the Pay)
Telephone Reclassification and)
Compensation Provisions of the)
Telecommunications Act of 1996)

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OPPOSITION OF THE COMPETITIVE
TELECOMMUNICATIONS ASSOCIATION TO
APCC's PETITION FOR RECONSIDERATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully submits this opposition to the petition for reconsideration filed by the American Public Communications Council ("APCC") in this docket.¹

SUMMARY

CompTel opposes APCC's request that the Commission require carriers to provide an announcement to callers when they do not accept calls from a payphone. The "blame the carrier" warning APCC proposes is patently contrary to the public interest and underscores that the Commission's payphone compensation plan will adversely impact the availability of telecommunications services from public pay telephones. Accordingly, CompTel opposes any attempt to require carriers to play an announcement on such calls, and urges the Commission instead to reconsider the *Report and Order's* compensation plan, which encourages the call blocking scenario APCC fears.

¹ Petition of APCC for Partial Reconsideration and Clarification, filed Oct. 21, 1996. Pursuant to paragraph 300 of the Commission's *Report and Order*, CompTel submits this opposition within seven days of the date petitions were filed.

DISCUSSION

CompTel has already submitted its views on the fundamental errors which have led to the Commission's erroneous decision to grant a windfall to PSPs and allow them to collect hidden surcharges from unwitting callers, and will not repeat those arguments here.² It notes, however, that other petitioners demonstrated, as did CompTel, that the Commission's order (1) arbitrarily and capriciously uses local coin rates as a surrogate for the significantly lower costs of access code and subscriber 800 calls;³ and (2) encourages a return to a pre-TOCSIA environment of high, hidden PSP surcharges, caller confusion, and call blocking.⁴ CompTel urges the Commission to correct these (and other) errors in the *Report and Order*.

CompTel's Opposition is limited to APCC's request that the Commission require carriers that have decided not to pay a PSP's exorbitant surcharges to provide an audible announcement on each call that they will not carry.⁵ Specifically, APCC requests an announcement stating, "[Carrier] is refusing to accept this call from this phone. The payphone is not malfunctioning."⁶ APCC's proposal is a preposterous solution to a problem of the PSPs' (and APCC's) own creation.

APCC puts forth no legal or public policy reason why PSPs, who advocated the "market" approach adopted by the Commission and who will benefit substantially from

² See Petition for Reconsideration, filed Oct. 22, 1996.

³ AT&T Petition at 5-13; Cable & Wireless Petition at 7-10; LDDS WorldCom Petition at 7-11; MCI Petition at 11-13; PageNet Petition at 9-16; Sprint Petition at 2-8.

⁴ AT&T Petition at 15; Cable & Wireless Petition at 7-10; Sprint Petition at 12.

⁵ APCC Petition at 2-3.

⁶ *Id.* at 3.

the hidden surcharges it allows, should receive government protection from any blame for their actions. CompTel agrees with APCC's premise that the public's ability to use payphone services will be harmed by the market environment the Commission's compensation plan will produce. However, if the Commission wishes to allow the market to function to set the compensation rate, it should allow all of the market forces which will affect those rates to operate. This includes the ability of consumers to know the source of their frustration and inconvenience, and the ability of carriers paying compensation to decide how to deal with their own customers. The pressure that callers may exert on location owners and PSPs to hold surcharges down is a significant disciplining force that the market offers, and the Commission should not interfere with its functioning.

At a minimum, if the Commission decides that callers must receive information at the payphone, CompTel has two suggestions. First, the Commission should modify the PSP's posting obligation to require not only that the local coin rate be disclosed, but also to include the following disclosure, "The phone owner also will charge this amount for any access code and toll free calls placed from this phone. Carriers who are unwilling to accept this additional charge may not accept your call from this phone." Second, the Commission cannot mandate a disclosure that does not fully explain the facts to consumers and is not helpful to them. APCC's proposed disclosure fails in both respects. A more informative and helpful disclosure would have to include recognition that the PSP established a charge which the carrier is unwilling to pay, which might be achieved by language such as:

[Carrier] is unwilling to pay the surcharge the phone owner has decided to assess for calls from this phone. To avoid this surcharge, please move to a different phone to place your call.

In addition, the Commission must recognize that providing the disclosure will increase set-up times for all calls and is costly to the carrier. Every call would be affected because, in order to determine in real time whether a call is originating from a payphone with a rate a carrier does not wish to pay, the carrier must examine every call to determine its origin before allowing any further processing to occur. Also, the carrier expends programming costs to develop any disclosure message and incurs access charges for the duration of the call.⁷ Moreover, if one accepts APCC's rationale that the disclosure will decrease unfounded service calls for "malfunctioning" payphones, it is clear that the PSP would be the primary economic beneficiary of the disclosure provided. Applying the principle adopted by the Commission in the order, therefore, the PSP, not the carrier, should pay the costs of this disclosure. CompTel suggests that carriers should be permitted to deduct the costs of this disclosure from compensation amounts it pays to the PSP (or, if the carrier does not receive any calls from the PSP, to bill it on a per-call basis for the disclosure).

At bottom, APCC's petition is an admission that the compensation plan will adversely affect the availability of payphone services to callers. At \$0.35 or more per call, many carriers (or, potentially, 800 service subscribers) might decide that accepting payphone calls is not worth the price to be paid. If this happens, callers surely will be inconvenienced, many will be confused, and most, understandably, will be frustrated by the latest government requirement emanating from Washington, D.C. Indeed, CompTel submits that, contrary to APCC's proposed disclosure, the payphone emphatically is *not* working properly if carriers are forced to decline revenue generating calls, and callers are denied the opportunity to place

⁷ Clearly, since the disclosure would occur only for calls which are by definition not completed, the carrier will not be able to recover these costs from the individual caller.

calls from payphones, due to a hidden surcharge assessed by PSPs. The fact that APCC foresees this outcome as likely enough to recommend a disclosure is powerful evidence that the compensation plan APCC successfully advocated is contrary to the public interest.

Accordingly, the Commission should reject APCC's disclosure proposal and should instead reform its payphone compensation plan so that PSPs will not be motivated to cause the outcome APCC fears.

Respectfully submitted,

**THE COMPETITIVE
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ASSOCIATION**

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